

# **In the Court of Appeals of the State of Alaska**

**Sherrie Ina Wilson,**

Appellant,

v.

**State of Alaska,**

Appellee.

**Trial Court Case # 3AN-09-04793CR**

Court of Appeals No. **A-13397**

## **Order**

Date of Order: **April 16, 2019**

This Court recently denied Sherrie I. Wilson's request that this Court permit her to file an appeal that is nearly eight years late. (Court of Appeals Order dated 3/21/2019.) The Court explained that it generally has no authority to hear an appeal that is filed more than 90 days after the distribution of the judgment, unless the defendant has earlier filed a timely motion to extend the filing deadline.

This Court also explained that the Court has on occasion allowed the filing of appeals beyond the 90-day deadline, but has done so only in cases where there is uncontested evidence that the failure to file a timely appeal was caused by the defendant's incompetent attorney. In other words, the Court has accepted appeals filed after the 90-day deadline only when the motion to accept those late-filed appeals are accompanied by the defendant's attorney's uncontested affidavit that the delay in filing was the fault of the attorney, not of the defendant, and that the defendant communicated to her attorney that she wished to file an appeal.

Ms. Wilson has now filed a second request that this Court accepted her late-filed appeal. In her pleading, she explains she has an affidavit from the attorney who represented her in her criminal case. She did not attached that affidavit to her pleading or otherwise file it with the Court, but Ms. Wilson essentially alleges that the person who represented her was incompetent because he was still a law student when he represented her.

But even if the Court accepts as true Ms. Wilson’s allegation that the person who represented her was still a law student, certain provisions of the State’s bar rules allow law students to appear and participate in superior court proceedings as legal interns when they are supervised by a licensed attorney who represents the client. *See* Bar Rule 44; *see also* AS 08.08.210(d). Under this rule, Ms. Wilson would have been represented by an attorney who was responsible for supervising the legal intern. Hence, even if Ms. Wilson’s allegation is true, and a law student appeared and participated in superior court on her behalf, this is not evidence that the failure to file a timely appeal was caused by the incompetence of Ms. Wilson’s attorney.

Generally speaking, the question of whether the failure to file a timely appeal was the result of an attorney’s incompetence cannot be decided solely on the basis of an attorney’s affidavit. This question must instead be answered through litigation in the trial court. Ms. Wilson’s case does not appear to be an exception to this rule, and if she wishes to pursue her claim of ineffective of assistance, she must do so by filing for post-conviction relief in the superior court.

For this reason, the second request that this Court accept Ms. Wilson’s late-filed appeal is **DENIED**. Ms. Wilson has also requested that this Court appoint an attorney to assist her with this appeal. This request is **DENIED** as moot.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

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M. Johnson, Deputy Clerk

cc: Douglas Moody, PD  
Tamara de Lucia, OCA

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